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A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, February 12, 2014, at the Richard J. Hughes Justice Complex, 25 Market Street, 4th Floor Conference Center, Trenton, New Jersey. The meeting was called to order by President George J. Scott, D.P.M., D.O., FACOFP

PRESENT

Board Members Berkowitz, Cheema, Criss, DeGregorio, Jordan, Krauss, Lomazow, Miksad, Paul, Rock, Scott, Stanley, and Walsh.

EXCUSED

Board Members Ciechanowski, Maffei, Mendelowitz, Rajput, Tedeschi and Weiss.

ALSO PRESENT

Senior Deputy Attorneys General Dick, Flanzman, and Warhaftig, Deputy Attorneys General Cordoma, Goulding, Hafner, Levine, Puteska, William V. Roeder, Executive Director of the Medical Board and Harry Lessig, M.D., Consultant Medical Director.

**STATEMENT CONCERNING THE
ANNUAL NOTICE OF PUBLIC MEETINGS**

The requirements of the “Open Public Meetings Act” were satisfied by notice of this meeting given in the annual notice adopted by the New Jersey State Board of Medical Examiners on August 14, 2013 which was transmitted to the ATLANTIC CITY PRESS, STAR LEDGER, CAMDEN COURIER POST, ASBURY PARK PRESS, BERGEN RECORD and the

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TRENTON TIMES, all on the 24th day of September 2013.

ANNOUNCEMENTS

MINUTES

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE JANUARY 8, 2014 OPEN BOARD MINUTES. The Motion was made by Dr. Jordan and seconded by Dr. Cheema. It carried unanimously.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO APPROVE THE DECEMBER 20, 2013 PHYSICIAN ASSISTANT ADVISORY COMMITTEE OPEN MINUTES. The Board noted that the use of PhD by a number of the ancillary health care providers, many of which are licensed by the Division of Consumer Affairs, is an emerging issue. The Board asked that this issue be placed on an upcoming Executive Committee Agenda. The Motion, made by Mr. Walsh and seconded by Dr. Jordan, carried unanimously.

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THE BOARD, UPON MOTION MADE AND
SECONDED, VOTED TO APPROVE THE JUNE
6, 2013 ELECTROLOGIST ADVISORY
COMMITTEE OPEN MINUTES.

The Motion was made by Dr. Paul and seconded
by Ms. Criss. It carried unanimously.

NEW BUSINESS

Off Agenda Item:

N.J.A.C. 13-35-6.17

The Executive Director informed the Board that he received a letter the day before the meeting from Richard J. Codey, Senator, 27th Legislative District, who is requesting that the Board review its regulations, N.J.A.C. 13:35-6.17, in light of some federal exceptions and New York's position relating to GainSharing.

THE BOARD, UPON MOTION MADE AND SECONDED,
VOTED TO REFER THE MATTER TO THE EXECUTIVE
COMMITTEE FOR FURTHER REVIEW AND STUDY.

The Motion was made by Ms. Criss and seconded by Dr. Jordan.
It carried unanimously.

OLD BUSINESS

LEGISLATION

S3063 - Seeks to implement the recommendations of the SCl report. The Board reviewed this bill last month and referred it to the Executive Committee for additional review and formation of potential comments.

THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO MAKE THE FOLLOWING COMMENTS. THE BOARD RECOGNIZED THAT PRESCRIPTION DRUG ABUSE HAS QUICKLY BECOME A TOP PUBLIC HEALTH ISSUE IN NEW JERSEY, AS WELL AS THE ENTIRE COUNTRY AND SUPPORTS EFFORTS AND ACTIVITIES TO COMBAT THIS PROBLEM. OVERALL, THE BOARD BELIEVED THAT A COMPREHENSIVE APPROACH IS NEEDED TO ATTACK THE ABUSE. THESE EFFORTS SHOULD BE DIRECTED TO EDUCATION OF THE PUBLIC IN ORDER TO ASSIST THEM IN UNDERSTANDING THE RISKS OF PRESCRIPTION DRUG USE TO AVOID MISUSE IN THE FIRST PLACE; TO INCREASE THE PATIENT'S UNDERSTANDING ABOUT SAFE STORAGE OF MEDICATION AND ITS PROPER DISPOSAL OF UNUSED MEDICATIONS, SUCH AS THROUGH THE "TAKE BACK" PROGRAMS CURRENTLY AVAILABLE; TO MAKE SURE PATIENTS DO RECEIVE THE PAIN AND OTHER MEDICATIONS THEY NEED, AND THAT PATIENTS HAVE

ACCESS TO SAFE AND EFFECTIVE DRUGS AND THAT EFFORTS TO ADDRESS THIS HEALTH ISSUE DO NOT UNINTENTIONALLY CAUSE A CHILLING EFFECT ON THE PRESCRIBING OF MEDICATIONS TO APPROPRIATELY TREAT PAIN; TO ENSURE RESPONSIBLE PRESCRIBING PRACTICES, INCLUDING INCREASING EDUCATION OF HEALTHCARE PROVIDERS AND PRESCRIBERS TO BETTER UNDERSTAND HOW MEDICATIONS CAN BE MISUSED AND TO IDENTIFY PATIENTS IN NEED OF TREATMENT; TO ENCOURAGE THE USE OF THE PRESCRIPTION DRUG MONITORING PROGRAMS BY LICENSED HEALTH CARE PROVIDERS TO ASSIST PRACTITIONERS TO QUICKLY IDENTIFY PATIENTS IN NEED OF TREATMENT OF POTENTIAL ABUSE AND CONNECT THEM WITH APPROPRIATE CARE, AS WELL AS IDENTIFY “DOCTOR SHOPPERS” AND TO EXPAND ACCESS TO AND AVAILABILITY OF EFFECTIVE TREATMENT OPTIONS AS A KEY COMPONENT OF ANY STRATEGY TO COMBAT PRESCRIPTION DRUG ABUSE. TO THE EFFECT THIS LEGISLATION ADVANCES THOSE GOALS, THE BOARD WAS SUPPORTIVE.

ADDRESSING SOME OF THE SPECIFIC PROVISIONS OF SENATE BILL 3063, THE BOARD OFFERED THE FOLLOWING COMMENTS.

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IN SECTION TWO, THE BOARD NOTED THAT CERTAIN AMOUNTS HAVE BEEN SOUGHT TO BE LEGISLATIVE FOR SOME CONTROLLED DANGEROUS SUBSTANCES, THAT IF PRESCRIBED OVER THAT AMOUNT IT WOULD BECOME A CRIMINAL OFFENSE. THE BOARD HOPED THE PROPONENT DID NOT INTEND THESE AMOUNTS TO BE CONTROLLING IN THE CASES IN WHICH A LEGITIMATE PRESCRIPTION WOULD BE ISSUED, FOR EXAMPLE, IN APPROPRIATELY PRESCRIBING MORPHINE IN A HOSPICE SETTING. HAVING SUCH LEGISLATIVELY MANDATED THRESHOLDS, MAY HAVE A CHILLING EFFECT AND MAY INHIBIT A PRESCRIBER FROM WRITING A SCRIPT THAT UNDER THE CIRCUMSTANCES MAY NOT ONLY BE APPROPRIATE, BUT MEDICALLY NECESSARY. THE BOARD HOPED THAT THESE LIMITATIONS WOULD NOT BE APPLIED IN SUCH A WAY THAT WOULD INHIBIT APPROPRIATE PRESCRIBING TO ALLEVIATE PAIN.

THE BOARD SUPPORTED THE CREATION OF THE TASK FORCE AND IF CREATED, IT STRONGLY SUPPORTED THAT THE BOARD OF MEDICAL EXAMINERS HAS A PRESENCE ON IT.

THE BOARD RECALLED THAT THE SCI REPORT RECOMMENDED THAT MONETARY PENALTIES SHOULD BE INCREASED AS IT WAS CRITICAL OF THE AMOUNTS

ASSESSED BY THE BME IN PRIOR MATTERS AND THAT THE FIRST VIOLATION SHOULD NOT BE LESS THAN \$10,000 AND NOT LESS THAN \$20,000 FOR THE SECOND AND EACH SUBSEQUENT VIOLATION. THE BOARD NOTED THAT THIS PROPOSAL MAKES THAT FEE SCHEDULE MANDATORY. THE BOARD WAS CONCERNED THAT THIS MAY HAVE A FAR REACHING CHILLING EFFECT ON APPROPRIATE PRESCRIBING. WHILE THE BOARD RECOGNIZED, AND SUPPORTED, THE DETERRENT EFFECT OF THESE AMOUNTS, HAVING IT MANDATORILY APPLIED FOR EACH AND EVERY "INAPPROPRIATE" PRESCRIPTION MAY LEAD TO CONSEQUENCES IN APPROPRIATE PRESCRIBING CIRCUMSTANCES, SUCH AS CREATING FEAR THAT WILL PARALYZE THE PRACTITIONER FROM WRITING NEEDED SCRIPTS, WHICH IT WAS NOT BELIEVED WAS INTENDED BY THIS PROVISION. THE BOARD RECOMMENDED THAT THE AMOUNT OF PENALTY TO BE ASSESSED SHOULD BE UP TO THE DISCRETION OF THE BOARD, IN PARTICULAR IN ASSESSING THE AMOUNT FOR SUBSEQUENT PRESCRIPTIONS. THE BOARD CONSISTENTLY HAS BASED THE PENALTIES ASSESSED ON THE PARTICULAR CIRCUMSTANCES OF EACH INDIVIDUAL CASE UNDER TERMS ALREADY SANCTIONABLE UNDER THE UNIFORM ENFORCEMENT ACT. THIS BILL WOULD REMOVE THE DISCRETION OF THE BOARD IN DETERMINING

MITIGATING FACTORS UNDER THE SPECIFICS OF THE CASE BEING REVIEWED.

WHILE CHANGING THE FREQUENCY IN WHICH PHARMACIES MUST SUBMIT THE DATA REALLY IMPACTS THE PHARMACISTS, THE BOARD RECOGNIZED THE UTILITY OF HAVING THE MOST UPDATED INFORMATION AVAILABLE IN THE PRESCRIPTION MONITORING DATABASE.

THE BOARD FULLY SUPPORTED THE PROVISIONS RELATING TO THE CONFIDENTIALITY OF THE INFORMATION OBTAINED THROUGH THE PRESCRIPTION MONITORING PROGRAM (SECTION 8). IT DID NOT, HOWEVER, SUPPORT THE REMOVAL OF THE REQUIREMENT THAT LAW ENFORCEMENT MUST OBTAIN A COURT ORDER TO ACCESS THE INFORMATION CONTAINED THEREIN. THE CONFIDENTIALITY OF PATIENT INFORMATION IS SO SACRED IN THE DOCTOR/PATIENT RELATIONSHIP AND INFORMATION OBTAINED IN THE RELATIONSHIP SHOULD NOT BE HANDED OUT WITHOUT THE PROTECTIONS THAT OBTAINING THE COURT ORDER PROVIDES. WHEN THE LEGISLATION WAS ORIGINALLY PROPOSED IN 2009 IN ESTABLISHING THE PRESCRIPTION MONITORING PROGRAM, THE BOARD WENT ON RECORD IN SUPPORT BUT ACKNOWLEDGING THAT THE

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CONFIDENTIALITY AND LIMITED ACCESS TO THE INFORMATION WERE PARAMOUNT TO THE ENTIRE PATIENT PHYSICIAN RELATIONSHIP AND THERE NEEDED TO BE A BALANCE ACHIEVED BETWEEN PRIVACY RIGHTS AND THE APPROPRIATE CIRCUMSTANCES OF DISCLOSURE, INCLUDING THE MANNER IN WHICH LAW ENFORCEMENT WAS TO OBTAIN THAT INFORMATION. THERE IS A GREAT POTENTIAL FOR THE MIS USE OF THIS INFORMATION AND THE PRIVACY OF THE PATIENT, EVEN IN THE MISUSE OF THESE MEDICATIONS, SHOULD NOT BE COMPROMISED. THE BOARD ALSO BELIEVED THAT CONFIDENTIALITY NEEDS TO BE PROTECTED AS THIS INFORMATION CAN ONLY BE USED WHEN, AND ONLY WHEN, THE ONE REVIEWING IT HAS THE APPROPRIATE KNOWLEDGE BASE TO ASSESS THE INFORMATION OBTAINED. THERE ARE A NUMBER OF CHECKS WITHIN THE PROGRAM, THAT IF THERE IS MISUSE OR CRIMINAL ACTIVITY BY AN INDIVIDUAL IS DISCOVERED, THAT THE INFORMATION CAN BE MADE AVAILABLE TO LAW ENFORCEMENT. TO DATE, THERE HAS NOT BEEN ANY EVIDENCE THAT THE PROTECTIONS ALREADY IN PLACE HAVE THWARTED LEGITIMATE INVESTIGATION AND/OR PROSECUTION OF ABUSES, WHETHER THAT BE AS A PRESCRIBER OR AS A PATIENT. THE BOARD STRONGLY URGES THAT THIS SECTION NOT BE AMENDED AND THAT THE

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REQUIREMENT OF OBTAINING A COURT ORDER REMAIN IN FULL FORCE AND EFFECT.

THE BOARD ALSO DID NOT SUPPORT THE NEW PROVISION SUGGESTED IN SECTION 8 WHICH REQUIRES THE MANDATORY CHECKING OF THE PRESCRIPTION MONITORING PROGRAM PRIOR TO DISPENSING A SCHEDULE II CDS. THE BOARD WAS CONCERNED THAT THIS MANDATORY CHECKING WILL CAUSE PRACTITIONERS TO STOP PRESCRIBING SCHEDULE II AND MOVE DOWN TO PRESCRIBING SCHEDULE III, WHICH WOULD NOT BE IN THE BEST INTEREST OF THE PATIENT. THE BOARD RECOGNIZED THE IMPORTANCE OF THIS ISSUE AND FURTHER RECOGNIZED THE MERIT AND VALUE WHICH THE BILL SEEKS TO ACCOMPLISH IN COMBATING THE INCREASING DRUG PROBLEM FOR PRESCRIPTION MEDICINE IN MAKING THE CHECK MANDATORY. SUCH A REQUIREMENT WOULD ADD ANOTHER BURDEN ON ALREADY OVER-STRETCHED LICENSEES. SUCH A REQUIREMENT IN THE EMERGENCY ROOM WOULD UNDULY DELAY THE PROVISION OF SERVICES IN A TIME SENSITIVE ARENA. IT WAS FEARED THAT SUCH A REQUIREMENT, PARTICULARLY IN THE EMERGENCY ROOM SETTING, WOULD HAVE A CHILLING EFFECT ON THE PROVISION OF PAIN RELIEF IN THE ER OR ACUTE CARE SETTING. THIS MAY LEAD TO AN UNAVOIDABLE

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CONSEQUENCE OF UNDER PRESCRIBING IN SOME CASES IF THE LEGISLATION WERE PASSED AS WRITTEN MAKING IT MANDATORY. THE BOARD BELIEVED THAT THE PRESCRIBER SHOULD BE FREE, IN HIS/HER PERSONAL MEDICAL JUDGMENT, BASED ON THE PRESENTING ISSUES OF THE PATIENT, TO DETERMINE WHEN AND IF THE PMP SHOULD BE CHECKED. THE BOARD, HOWEVER, REALIZED THE OVERALL INTENT AND VALUE OF THE BILL AS IN THE BEST INTEREST OF SAFE PRACTICE FOR THE CONSUMER AND SUGGESTED THAT THE MANDATORY REQUIREMENT BE REVISED AND TO EXEMPT LICENSEES FROM HAVING TO CHECK THE PMP IF A TEN-DAY OR LESS SUPPLY IS BEING WRITTEN IN ANY SETTING AND WHEN A THIRTY-DAY OR LESS SUPPLY IS BEING WRITTEN IN THE ACUTE CARE SETTING. IF, HOWEVER, THIS REQUIREMENT WAS TO REMAIN IN THE BILL, THE BOARD SUGGESTED THAT THE DRAFTER CONSIDER AT A MINIMUM PERMITTING THE PRACTITIONER TO DELEGATE ANOTHER LICENSED HEALTHCARE PROFESSIONAL OF THE DIVISION OF CONSUMER AFFAIRS AS HIS/HER AGENT FOR CHECKING THE DATA PRIOR TO WRITING THE PRESCRIPTION. THE BOARD BELIEVED THAT THE MECHANICS OF CHECKING THE INFORMATION AND OBTAINING THE DATA CAN BE PERFORMED BY ANOTHER LICENSED HEALTHCARE PROFESSIONAL LICENSED OF THE DIVISION OF CONSUMER

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AFFAIRS AND THEN, WITH THE INFORMATION AT HAND, THE PRESCRIBER CAN MAKE THE APPROPRIATE ASSESSMENT. IF THIS SECTION TO REQUIRE THE PRACTITIONER TO LOOK UP IN THE PMP EACH INSTANCE, RATHER THAN A DESIGNATED HEALTHCARE PROFESSIONAL, THE BOARD EXPRESSED CONCERN THAT THE REQUIREMENT AGAIN WOULD HAVE A CHILLING EFFECT AS THE REQUIREMENT WOULD BECOME BURDENSOME, POTENTIALLY CAUSING THE PRESCRIBER TO LIMIT PRESCRIPTIONS TO SCHEDULE III. THE BOARD ALSO SUGGESTED THAT THERE BE INCREASED EFFORTS IN DEVELOPING A PMP SYSTEM THAT IS MORE USER FRIENDLY AND UTILIZING TECHNOLOGY THAT IS BOTH EFFICIENT AND EFFECTIVE. FINALLY, THE BOARD HOPED THAT THE LEGISLATORS COULD SEE THE NEED TO INCLUDE FINANCIAL AWARDS AND INCENTIVES TO FACILITIES TO IMPROVE TRACKING SYSTEMS WITHIN FACILITIES AND OFFICES THAT WOULD ACHIEVE A COMPREHENSIVE PICTURE OF PATIENT CARE INCORPORATING THE PMP REPORTS IN ORDER TO ASSURE THAT A COMPLETE AND ACCURATE PICTURE OF A PATIENT'S PRESCRIBING HISTORY COULD BE OBTAINED.

The Motion, made by Dr. Jordan and seconded by Ms. Criss, carried unanimously.

INFORMATIONAL

Nothing provided.

PUBLIC COMMENT

Attorney Jerry Grecys informed the Board that he has met with Dr. Ackerman and further explained that he met with her for the limited purpose of assessing with her what papers, if any, were pending before the Board. He has reviewed the current Order and has explained those terms to her. She believed that she had a motion pending before the Board. He informed the Board that she has seen Dr. Baxter. He has explained that she needs to follow the recommendations. Dr. Ackerman addressed the Board assuring it that she believes she has complied with the Order and is asking that her license be reinstated. She wants the motion that she submitted in January to be scheduled

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before the Board. DAG Puteska clarified for the record that nothing was pending before the Board. The Board thanked Attorney Grecys and Dr. Ackerman for their comments.

Respectfully submitted,

George J. Scott, D.P.M., D.O., FACOFP
Board President

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